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U.S. DISTRICT COURT E.D.N.Y.
SEP 27 2005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PM _____
01:00 PM _____

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ALTHEA DAVIS, Major, United States
Army Reserve,

Plaintiff,

MEMORANDUM
& ORDER

-against-

04 CV 1051 (SLT)(SMG)

FRANCIS J. HARVEY, Secretary of the
United States Army,

Defendant.

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TOWNES, District Judge:

Plaintiff Althea Davis brings this action pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* (2004), against defendant R.L. Brownlee, Acting Secretary of the United States Army.¹ On July 27, 2005, this Court (TOWNES, U.S.D.J.) referred the parties' cross-motions for summary judgment to Magistrate Judge Stephen M. Gold for a Report and Recommendation. This Court adopts Judge Gold's Report and Recommendation in its entirety.

A district court judge may designate a magistrate to hear and determine certain motions pending before the Court and to submit to the Court proposed findings of fact and a recommendation as to the disposition of the motion. *See* 28 U.S.C. § 636(b)(1). Within ten days

¹Although Brownlee was named in the Complaint in his official capacity as Acting Secretary of the United States Army, Dr. Francis J. Harvey was sworn in as Secretary of the United States Army on November 19, 2004. Accordingly, pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Dr. Harvey is substituted as the defendant in this action in place of Brownlee. *See* Fed. R. Civ. P. 25(d)(1) (providing that "[w]hen a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party").

of service of the recommendation, any party may file written objections to the magistrate's report. *See id.* Upon *de novo* review of those portions of the record to which objections were made, the district court judge may affirm or reject the recommendations. *See id.*

The Court is not required to review the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). In addition, failure to file timely objections may waive the right to appeal this Court's Order. *See* 28 U.S.C. § 636(b)(1); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

In this case, Judge Gold recommended that defendant's motion for summary judgment dismissing all claims alleged in plaintiff's complaint be granted and that plaintiff's cross-motion for summary judgment be denied. Objections to Judge Gold's recommendations were due by June 2, 2006. No objections to the Report and Recommendation were filed with this Court. Upon review of the recommendation, this Court adopts and affirms the Report and Recommendation of Magistrate Judge Gold.

SO ORDERED.

Brooklyn, New York
Dated: September 21, 2006

s/SLT
Sandra L. Townes
U.S.D.J.